

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SEAN JEFFREY RICHSON,

Petitioner,

v.

K. CLARK,

Respondent.

No. 1:20-cv-01502-DAD-JLT (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS AND DISMISSING
PETITION WITHOUT PREJUDICE

(Doc. Nos. 19, 23, 24)

Petitioner Sean Jeffrey Richson is a state prisoner proceeding *in propria persona* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On May 14, 2021, respondent filed a motion to dismiss the pending petition. (Doc. No. 19.) On June 10, 2021, the assigned magistrate judge issued findings and recommendations, recommending that respondent's motion to dismiss of the petition be granted. (Doc. No. 22.) The findings and recommendations were served upon all parties and contained notice that any objections were to be filed within ten days from the date of service. (*Id.* at 5.) The next day, on June 11, 2021, petitioner filed a motion to withdraw his pending petition. (Doc. No. 23.) On June 16, 2021, the magistrate judge issued an order withdrawing the June 10, 2021 findings and recommendations, and issued new findings and recommendations, construing petitioner's motion

1 as a request for voluntary dismissal of this federal habeas action. (Doc. Nos. 24 at 1; 25.) In the
2 pending findings and recommendations, the magistrate judge recommended dismissal of the
3 petition for writ of habeas corpus. (Doc. No. 24 at 2.) These findings and recommendations were
4 served upon all parties and contained notice that any objections were to be filed within ten days
5 from the date of service of that order. (*Id.*) To date, no party has filed objections.

6 In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(C), the court has conducted a
7 *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the
8 magistrate judge's findings and recommendations are supported by the record and proper
9 analysis.

10 In addition, having concluded that the pending petition must be dismissed, the court now
11 turns to whether a certificate of appealability should issue. A state prisoner seeking a writ of
12 habeas corpus has no absolute entitlement to appeal a district court's denial of his petition, and an
13 appeal is only allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335–36
14 (2003); 28 U.S.C. § 2253. Where, as here, the court denies habeas relief on procedural grounds
15 without reaching the underlying constitutional claims, the court should issue a certificate of
16 appealability “if jurists of reason would find it debatable whether the petition states a valid claim
17 of the denial of a constitutional right and that jurists of reason would find it debatable whether the
18 district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).
19 In the present case, the court finds that reasonable jurists would not find the court's determination
20 that the petition should be dismissed debatable or wrong, or that petitioner should be allowed to
21 proceed further. Therefore, the court declines to issue a certificate of appealability.

22 Accordingly,

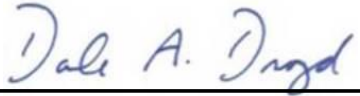
- 23 1. The findings and recommendations issued on June 16, 2021 (Doc. No. 24) are
24 adopted in full;
- 25 2. Petitioner's motion to withdraw petition (Doc. No. 23) is granted;
- 26 3. Respondent's motion to dismiss (Doc. No. 19) is denied as having been rendered
27 moot;
- 28 4. The petition for writ of habeas corpus (Doc. No. 1) is dismissed;

1 5. The court declines to issue a certificate of appealability; and

2 6. The Clerk of the Court is directed to close this case.

3 IT IS SO ORDERED.

4 Dated: **September 4, 2021**


UNITED STATES DISTRICT JUDGE